

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA**

ROY KESTERSON,

Plaintiff,

v.

**Civil Action No. 3:08cv146
(Judge Bailey)**

**DOLE TOLER, DELBERT HARRISON,
WEST VIRGINIA PAROLE BOARD,**

Defendants.

OPINION/REPORT AND RECOMMENDATION

On September 26, 2008, the *pro se* plaintiff filed a civil rights complaint against the above-named defendants. In the complaint, the plaintiff complains of certain actions taken by the defendants with regard to his parole supervision.

On October 15, 2008, the plaintiff was granted permission to proceed as a pauper and was assessed the full \$350 filing fee. However, because the plaintiff did not have sufficient funds, an initial partial filing fee was not required. Therefore, this case is before the undersigned for an initial review and report and recommendation pursuant to LR PL P 83.01, et seq.

Pursuant to 28 U.S.C. § 1331(b), [a] civil action wherein jurisdiction is not founded solely on diversity of citizenship may . . . be brought only in (1) a judicial district where any defendant resides, if all defendants reside in the same state, (2) a judicial district in which a substantial part of the events or omissions giving rise to the claim occurred . . . or (3) a judicial district in which any defendant may be found, if there is no district in which the action may otherwise be brought.” In this case, although the plaintiff resides in Braxton County, West Virginia, within this judicial district, the defendants all appear to reside in either Fayette or Kanawha County, West Virginia. Moreover, it

appears that a substantial portion of the events giving rise to the plaintiff's claims occurred in Nicholas County, West Virginia.

Because Fayette, Kanawha and Nicholas County are all located within the Southern District of West Virginia, venue is not appropriate in this Court. Accordingly, it is hereby recommended that pursuant to 28 U.S.C. §§ 1404(a) and 1406(a), this matter be **TRANSFERRED** to the United States District Court for the Southern District of West Virginia for all further proceedings.

Any objections to this Opinion/Report and Recommendation shall be in writing and clearly identify those portions of the recommendation to which objection is made and the basis for such objections. A copy of any objections shall also be submitted to the Honorable John P. Bailey, Chief United States District Judge. Failure to timely file objections to this recommendation will result in waiver of the right to appeal from a judgment of this Court based upon such recommendation. 28 U.S.C. § 636(b)(1); Thomas v. Arn, 474 U.S. 140 (1985); Wright v. Collins, 766 F.2d 841 (4th Cir. 1985); United States v. Schronce, 727 F.2d 91 (4th Cir. 1984), cert. denied, 467 U.S. 1208 (1984).

The Clerk is directed to send a copy of this Opinion/Report and Recommendation to the *pro se* petitioner by certified mail, return receipt requested, to his last known address as shown on the docket.

DATED: December 4, 2008.

John S. Kaull
JOHN S. KAULL
UNITED STATES MAGISTRATE JUDGE